

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NORTH DAKOTA**

In re:

Bankruptcy No. 07-30750  
Chapter 7

Dam Huynh,

Debtor.

/

Adversary No. 07-7039

Discover Bank, Issuer of Discover Card,

Plaintiff,

vs.

Dam Huynh,

Defendant.

/

**MEMORANDUM AND ORDER**

Before the Court is a Motion for Default Judgment filed by Plaintiff Discover Bank, on January 18, 2008.

By Complaint filed December 3, 2007 and served December 5, 2007, Plaintiff seeks a determination that the debt owed to Plaintiff is nondischargeable pursuant to section 523(a)(2). The Complaint was properly served upon Defendant/Debtor Dam Huynh and no Answer was forthcoming within the allowed period. Plaintiff moved for default judgment on January 18, 2008.

Defendant filed an Answer, albeit late, on February 1, 2008, denying the allegations in the Complaint and asserting affirmative defenses. Additionally, Defendant filed a Response to Plaintiff's Motion for Default Judgment requesting the Court to deny the Motion on February 6, 2008..

Disposition of a Rule 55 motion for default judgment lies within the court's discretion and in its exercise the court may, among other things, consider whether a default is de minimis, whether the plaintiff was prejudiced by the defendant's delay in answering and whether there is any suggestion that the delay was intentional or the result of bad faith. United States ex rel Time Equipment Rental & Sales, Inc. v. Harre, 983 F.2d 128 (8<sup>th</sup> Cir. 1993). Default judgment is not appropriate, however, for a marginal failure to comply with time requirements." Forsythe v. Hales, 255 F.3d 487 (8<sup>th</sup> Cir. 2001).

Given the strong policy of favoring decisions on the merits, default judgment will not be entered in this matter as it appears the delay was minimal, the delay was unintentional and not in bad faith, and there has been no apparent harm to Plaintiff.

Accordingly, the Motion for Default Judgment is DENIED.

**SO ORDERED.**

Dated this 12<sup>th</sup> day of February, 2008.



**WILLIAM A. HILL, JUDGE  
U.S. BANKRUPTCY COURT**